

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. C20-882-MLP

ORDER

I. INTRODUCTION

This matter is before the Court on Defendant Microsoft Corporation's ("Microsoft") motion to seal Exhibit B to its verification of state court records. (Mot. (Dkt. # 13).) Plaintiff O'Donnell/Salvatori, Inc. ("ODS") did not submit an opposition¹ and Microsoft filed a reply (dkt. # 15). For the reasons discussed below, Microsoft's motion is GRANTED.

II. BACKGROUND

ODS and Microsoft entered into an Independent Contractor Agreement that subsequently had five amendments ("ICA and Amendments") to manage the creation and delivery of certain

¹ Microsoft certified that its counsel reached out to counsel for ODS to meet and confer regarding this motion. (Mot. at 3.) Counsel for ODS did not respond, however, Microsoft notes ODS stipulated to filing the same material under seal in state court.

1 music for Microsoft’s Halo video games. (Compl. (Dkt. # 1-3 at ¶ 9).) ODS initiated this action
2 in King County Superior Court in March 2020 based on allegations that Microsoft breached the
3 ICA and Amendments by failing to pay ODS pursuant to the negotiated terms and by engaging
4 in other unlawful conduct. (*Id.* at ¶¶ 24-31.) ODS filed its complaint, which describes and
5 attaches a copy of the ICA and Amendments, in the public record. (“Yarger Decl.” (Dkt. # 12-1)
6 ¶ 3.) The ICA and Amendments contain royalty rates and other commercially sensitive non-
7 financial terms, which Microsoft states it has expended a substantial amount of time and effort
8 into creating, developing, and negotiating. (*Id.* at ¶¶ 3, 4.)

9 ODS and Microsoft submitted a stipulated motion to seal portions of the ICA and
10 Amendments that contain competitively sensitive negotiations in state court. (Dkt. # 1-6.) The
11 state court evaluated the motion as a motion to redact and found Microsoft demonstrated a
12 specific and compelling need to preserve secrecy that outweighed the public’s general right to
13 access unredacted copies of the materials. (*Id.*)

14 Microsoft filed a partial motion to dismiss the complaint in state court on May 12, 2020.
15 (Dkt. # 1-7.) ODS submitted an opposition to the motion that discusses the same commercially
16 sensitive portions of the ICA and Amendments. The opposition also includes a declaration with
17 the following exhibits: (1) an email string between counsel for ODS and counsel for Microsoft
18 reflecting sensitive parts of the ICA and Amendments; and (2) copies of reports reflecting
19 royalties paid to ODS that include royalty rates from the ICA and Amendments. (Verification
20 (Dkt. # 1-8), Ex B. at 50-117.) ODS moved to seal the sensitive parts of the agreements and
21 exhibits and Microsoft joined ODS’s motion. (*Id.*, Ex. A at 167-71, 230.)

22 Microsoft removed this matter to the United States District Court for the Western District
23 of Washington on June 8, 2020. (Dkt. # 1.) Microsoft filed its verification of state court records

1 with two exhibits. (Dkt. # 12.) Exhibit A contains documents filed publicly in the state court,
2 including documents with redactions of sealed material. (Dkt. # 12-1.) Exhibit B contains
3 documents subject to the joint motion to seal pending in state court at the time Microsoft
4 removed this matter, and sealed documents from the state court record. (Dkt. ## 12-2, 14.)
5 Microsoft's instant motion requests the Court seal Exhibit B to its verification of state records.

6 III. DISCUSSION

7 A. Legal Standards

8 Under the Court's Local Rules, "[t]here is a strong presumption of public access to the
9 court's files." Local Civil Rule 5(g); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589,
10 597 (1978). To rebut this presumption, a party must file a motion that includes "a specific
11 statement of the applicable legal standard and the reasons for keeping a document under seal,
12 with evidentiary support from declarations where necessary." Local Civil Rule 5(g)(3)(B). Thus,
13 the burden is on the moving party to come forward with an applicable legal standard justifying
14 the sealing of the documents at issue and to produce evidentiary support showing that the
15 standard is met. *See id.*

16 The Ninth Circuit has clarified that the standard for determining whether to seal a record
17 turns on whether the records are "more than tangentially related to the merits of a case." *See Ctr.*
18 *for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098-1102 (9th Cir. 2016). If the records at
19 issue are more than tangentially related to the merits of the case, the court must apply the
20 "compelling reasons" standard to the motion to seal. *See id.* If the records are only tangentially
21 related to the merits, the party seeking to seal the records need only show "good cause" to seal
22 those records. *See id.*

1 Here, Microsoft argues the compelling reasons standard applies because the material it
2 seeks to seal is part of the complaint, which is more than tangentially related to the underlying
3 cause of action. (Mot. at 3.) The Court agrees. Under the “compelling reasons” standard, the
4 party seeking to seal judicial records bears the burden of “articulat[ing] compelling reasons
5 supported by specific factual findings . . . that outweigh the general history of access and the
6 public policies favoring disclosure, such as the public interest in understanding the judicial
7 process.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006)
8 (internal citations and quotation marks omitted). “In turn, the court must conscientiously balance
9 the competing interests of the public and the party who seeks to keep certain judicial records
10 secret.” *Id.* at 1179. Then, “if the court decides to seal certain judicial records, it must base its
11 decision on a compelling reason and articulate the factual basis for its ruling, without relying on
12 hypothesis or conjecture.” *Id.*

13 “In general, ‘compelling reasons’ ... exist when such ‘court files might have become a
14 vehicle for improper purposes,’ such as the use of records to ... release trade secrets.”
15 *Kamakana*, 447 F.3d at 1179 (citing *Nixon*, 435 U.S. at 598). The Ninth Circuit has adopted the
16 Restatements’ definition of “trade secret” for purposes of sealing, holding that “[a] ‘trade secret
17 may consist of any formula, pattern, device or compilation of information which is used in one’s
18 business, and which gives him an opportunity to obtain an advantage over competitors who do
19 not know or use it.” *In re Electronic Arts*, 298 Fed. App’x 568, 569-70 (9th Cir. 2008) (quoting
20 Restatement of Torts § 757, cmt. b). Additionally, “compelling reasons” may exist if sealing is
21 required to prevent judicial documents from being used “as sources of business information that
22 might harm a litigant’s competitive standing.” *Id.* at 569 (9th Cir. 2008) (citing *Nixon*, 435 U.S.
23 at 598)

1 Microsoft asserts the material it seeks to seal is competitively sensitive to and trade
2 secrets of Microsoft, and that the information derives independent economic value from its
3 secrecy. (Mot. at 4.) Microsoft also asserts it takes reasonable measures to maintain its
4 confidentiality and disclosure of this information would put it at a competitive disadvantage in
5 the video game music marketplace. (*Id.*) Microsoft further asserts it has tailored its request. (Mot.
6 at 4.) Exhibit A to Microsoft's verification of state court records contains versions of the filings
7 that redact the material it seeks to seal. (*Id.*) Specifically, Microsoft limited its redactions to
8 excerpts containing information that would allow a third party to determine the numbers and
9 terms in the ICA and Amendments, such as royalty calculations. (*Id.* at 4-5.)

10 The Court finds there are compelling reasons to seal Exhibit B to Microsoft's verification
11 of state records. The material appears to be confidential and commercially sensitive, and further
12 reflects trade secrets regarding Microsoft's royalty calculations and negotiations, among other
13 things. Further, disclosure of this material could harm Microsoft's competitive standing in the
14 video game music marketplace. The Court finds these compelling reasons outweigh the public's
15 interest in access to the materials. Given that ODS did not submit an opposition and stipulated to
16 the sealing of this material in state court, the Court finds Microsoft's motion should be granted.

17 IV. CONCLUSION

18 For the foregoing reasons, Microsoft's motion (dkt. # 13) is GRANTED. The Clerk is
19 directed to maintain Exhibit B to Microsoft's verification of state records (dkt. # 14) under seal.

20 Dated this 13th day of July, 2020.

21 

22 MICHELLE L. PETERSON
23 United States Magistrate Judge